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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11	Albina Petrosian; and Levon)	CV 11-1323 RSWL (FMOx)
12	Petrosian,)	
13	Plaintiffs,)	ORDER Re:(1) Defendant's
14	vs.)	Motion to Dismiss
15	Western Reserve Life)	Plaintiffs' First,
16	Assurance Company of Ohio,)	Second, Third and Fourth
17	a corporation; and Does 1-)	Claims for Relief [7]
18	20, inclusive,)	and (2) Defendant's
19	Defendants.)	Motion to Strike Prayer
		for Punitive Damages [8]

20 On April 27, 2011, Defendant Western Reserve Life
21 Assurance Company of Ohio's Motion to Dismiss Plaintiff
22 Albina Petrosian and Levon Petrosian's ("Plaintiffs")
23 First, Second, Third and Fourth Claims for Relief [7]
24 and Defendant Western Reserve Life Assurance Company of
25 Ohio's Motion to Strike Prayer for Punitive Damages [8]
26 came on for regular calendar before this Court. Having
27 considered all the papers and arguments pertaining to
28 these Motions, the Court **NOW FINDS AND RULES AS**

FOLLOWS :

1. Defendant Western Reserve Life Assurance Company Of Ohio's Motion To Dismiss Plaintiffs' First, Second, Third And Fourth Claims For Relief

Defendant Western Reserve Life Assurance Company of Ohio's ("Defendant") Motion to Dismiss is **GRANTED**.

Defendant moves to dismiss: (1) Plaintiffs' First Cause of Action for Breach of Contract as to Plaintiff Levon Petrosian; (2) Plaintiffs' Second Cause of Action for Breach of Covenant of Good Faith and Fair Dealing as to Plaintiff Levon Petrosian; (3) Plaintiffs' Third Cause of Action for Agent Fraud in its entirety; and (4) Plaintiffs' Fourth Cause of Action for Assessment of Punitive Damages in its entirety.

The Court **GRANTS** Defendant's Motion to Dismiss as to the First and Second Causes of Action for Breach of Contract and Breach of Covenant of Good Faith and Fair Dealing as to Plaintiff Levon Petrosian.

As to the First Cause of Action for Breach of Contract, the Court finds that the Complaint fails to state a claim upon which relief may be granted with respect to Plaintiff Levon Petrosian. Specifically, the Complaint alleges that Plaintiff Albina Petrosian is the named primary beneficiary under the Policy at issue in this Action, Western Reserve life insurance policy number 910-013227885 ("Policy"), and that Plaintiff Levon Petrosian is the contingent beneficiary under this Policy. As the Policy's primary beneficiary

1 here survived the Insured, Kristina Petrosian
2 ("Insured"), the Court therefore finds that Plaintiff
3 Levon Petrosian's contingent rights under the Policy
4 have not and cannot come into being. See Mayr v. Arana,
5 133 Cal. App. 2d 471, 474-75 (1955) (agreeing with the
6 court in Rossetti v. Hill, 161 F.2d 549 (9th Cir. 1947)
7 "that since the 'direct' beneficiary survived the
8 insured[,] the right of the 'contingent' beneficiaries
9 never came into being."). Therefore, as Plaintiffs
10 cannot maintain a claim for breach of contract here
11 with respect to Plaintiff Levon Petrosian, and
12 Plaintiffs do not oppose Defendant's Motion to Dismiss,
13 Plaintiffs' First Cause of Action for Breach of
14 Contract as to Plaintiff Levon Petrosian is **DISMISSED**
15 **WITH PREJUDICE**.

16 Moreover, as Plaintiffs cannot state a claim for
17 breach of contract here with regard to Plaintiff Levon
18 Petrosian, the Court finds that Plaintiffs cannot state
19 a claim upon which relief can be granted as to the
20 Second Cause of Action for Breach of Covenant of Good
21 Faith and Fair Dealing with regard to Plaintiff Levon
22 Petrosian. See Waller v. Truck Ins. Exchange, Inc., 11
23 Cal. 4th 1, 35-36 (1995) (holding that absent the
24 contractual right, the implied covenant has nothing
25 upon which to act as a supplement, and "should not be
26 endowed with an existence independent of its
27 contractual underpinnings"). Therefore, as Plaintiffs
28 cannot maintain a claim for breach of covenant of good

1 faith and fair dealing here with respect to Plaintiff
2 Levon Petrosian, and Plaintiffs do not oppose
3 Defendant's Motion to Dismiss, Plaintiffs' Second Cause
4 of Action for Breach of Good Faith and Fair Dealing as
5 to Plaintiff Levon Petrosian is **DISMISSED WITH**
6 **PREJUDICE.**

7 The Court **GRANTS** Defendant's Motion to Dismiss as
8 to the Third Cause of Action for Agent Fraud.
9 Plaintiffs have twenty days with which to amend their
10 claim.

11 In order to state a claim for fraud, a plaintiff
12 must plead: (1) misrepresentation (2) knowledge of
13 falsity or "scienter," (3) intent to defraud, (4)
14 justifiable reliance, and (5) resulting damage. See
15 Engalla v. Permanente Med. Grp., Inc., 15 Cal. 4th 951,
16 974 (1997).

17 The Court finds that Plaintiffs have failed to
18 state a claim upon which relief may be granted as to
19 the Third Cause of Action for Agent Fraud.
20 Specifically, Plaintiffs fail to allege sufficient
21 facts here to show that Plaintiffs relied on the
22 Defendant's allegedly false misrepresentations, as the
23 Complaint alleges that the misrepresentations were made
24 to the Insured, and not to either of the Plaintiffs.
25 Moreover, the Court finds that Plaintiffs fail to
26 allege sufficient facts here to show that Plaintiffs
27 suffered damages as a result of the alleged
28 misrepresentations. See Conrad v. Bank of America, 45

1 Cal. App. 4th 133, 156 (1996).

2 As such, the Court **GRANTS** Defendant's Motion to
3 Dismiss as to the Third Cause of Action for Agent
4 Fraud. However, the Court grants Plaintiffs **20 days**
5 **leave to amend** as to this claim because Plaintiffs may
6 be able to allege facts to support a claim for agent
7 fraud.

8 The Court **GRANTS** Defendant's Motion to Dismiss as
9 to Plaintiffs' Fourth Cause of Action for Assessment of
10 Punitive Damages. The Court finds that no such claim
11 for relief exists under California law. See Hilliard v.
12 A.H. Robins Co., 148 Cal. App. 3d 374, 391 (1983).

13 Accordingly, as Plaintiffs cannot maintain a claim for
14 assessment of punitive damages here, and Plaintiffs do
15 not oppose Defendant's Motion to Dismiss here,
16 Plaintiffs' Fourth Cause of Action for Assessment of
17 Punitive Damages is **DISMISSED WITH PREJUDICE**.

18 2. Defendant Western Reserve Life Assurance Company Of
19 Ohio's Motion To Strike Prayer For Punitive Damages
20 Defendant's Motion to Strike Prayer for Punitive
21 Damages is **DENIED**.

22 Defendant moves to strike the allegations set forth
23 in paragraphs 5, 10, 11, 15, 18¹ of the Complaint, and
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26 ¹ As the Court **GRANTS** Defendant's Motion to
27 Dismiss, Defendant's Motion to Strike as to paragraphs
28 15 and 18 of Plaintiffs' Complaint is therefore moot

1 the prayer for exemplary damages set forth on page 6,
2 line 2 of the Complaint.

3 The Court finds that the allegations at issue here
4 sufficiently comply with the Federal Rules of Civil
5 Procedure, as Plaintiffs adequately specify the
6 allegations regarding Defendant's intentional and
7 malicious behavior in failing to provide the Policy
8 amount, as well as the relief sought by Plaintiffs in
9 this Action, and therefore provide sufficient notice to
10 Defendant of the claims against it in this Action. See
11 California v. United States, 512 F. Supp. 36, 39 (N.D.
12 Cal. 1981).

13
14 **IT IS SO ORDERED.**

15 DATED: May 9 , 2011.

RONALD S.W. LEW

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17 HONORABLE RONALD S.W. LEW
Senior, U.S. District Court Judge

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and need not be addressed.